

**Shire of Exmouth**  
**Town Planning Scheme N° 3**

**Amendment N° 19**

Prepared by  
Shire of Exmouth  
October 2011

**PLANNING AND DEVELOPMENT ACT 2005**  
**RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME**  
**SHIRE OF EXMOUTH**  
**TOWN PLANNING SCHEME N°. 3**  
**AMENDMENT N°. 19**

**RESOLVED** that the Council, in pursuance of Section 75 of the *Planning and Development Act 2005* amend the above Local Planning Scheme by;

1. Insert a new Part 6 Special Control Areas into the Scheme and renumber the Scheme accordingly;
2. Insert the Development Contribution provisions in the Scheme under Part 6 Special Control Areas;
3. Insert new provisions for Structure Plans into Part 5 of the Scheme;
4. Insert Schedule 11 - Development Contribution Areas and Schedule 12 - Statutory Static Feasibility Assessment Model in order to be consistent with SPP3.6;
5. Amend Part 5 clause 5.2.3 and 5.5.2 to require the preparation of a Structure Plan in accordance with clause 5.11; and
6. Amend Part 5 clause 5.5.3 to read "all development shall be in accordance with the relevant Exmouth Marina Village Precinct Design Guidelines (as amended)."

Dated this <sup>mt</sup> ~~22~~ <sup>16<sup>th</sup></sup> day of ~~MARCH~~ <sup>mt</sup> JUNE ~~2012~~ <sup>mt</sup> 2011

  
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**CHIEF EXECUTIVE OFFICER**

DATE 22/3/12

## Proposal to Amend District Zoning Scheme

1. Local Authority: Shire of Exmouth
2. Description of Local Planning Scheme: Town Planning Scheme No. 3
3. Type of Scheme: District Zoning Scheme
4. Amendment No.: Amendment No. 19
5. Proposal:
  1. Insert a new Part 6 Special Control Areas into the Scheme and renumber the Scheme accordingly;
  2. Insert the Development Contribution provisions in the Scheme under Part 6 Special Control Areas;
  3. Insert new provisions for Structure Plans into Part 5 of the Scheme;
  4. Insert Schedule 11 - Development Contribution Areas and Schedule 12 - Statutory Static Feasibility Assessment Model in order to be consistent with SPP3.6;
  5. Amend Part 5 clause 5.2.3 and 5.5.2 to require the preparation of a Structure Plan in accordance with clause 5.11; and
  6. Amend Part 5 clause 5.5.3 to read "all development shall be in accordance with the relevant Exmouth Marina Village Precinct Design Guidelines (as amended)."

## SCHEME AMENDMENT 19 REPORT

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## **1.0 INTRODUCTION**

The Town Planning Scheme No. 3 (the Scheme) was gazetted in September 1999. Since the Scheme was formalised the Shire of Exmouth and other relevant authorities have undertaken major studies, including the Exmouth Floodplain Management Study, Foreshore Development, upgrading Effluent Reticulation and dual use pathways, which identified major expenditure for engineering works recommended by the studies.

Also future urban growth within the Exmouth townsite will occur on constrained land requiring major infrastructure investment to accommodate the physical and environmental needs. The associated costs to provide flood mitigation works to secure future growth are estimated to be substantial and the Shire's will incur administrative costs which directly relate to those tasks.

This report examines the existing planning framework and provides justification for the inclusion of developer contributions provisions within the Scheme; envisioned to ensure the high cost of providing sufficient and appropriately serviced land to accommodate future needs within physical and environmental constraints is equitably shared with developers.

### **1.1 Background**

Scheme Amendment 19 was prepared by Gray & Lewis Land Use Planners in 2007. Council has since received consent from the Commission for advertising the amendment subject to modifications; these changes included the inclusion of State Planning Policy 3.6 (SPP3.6) and structure plan provisions. These modifications have been undertaken by the Shire of Exmouth.

Further, the Commission recommended that the establishment of Development Contribution Areas (DCA) as required by SPP3.6 is conducted as a separate amendment process. The valuation of land acquired for the provision of infrastructure will be in accordance with clause 6.2.12: the Statutory Static

Feasibility Assessment Model and should be inserted as a Schedule in the Scheme.

The amendment will assist Council in co-ordinating the timely provision of infrastructure, and developer contributions will be sought towards such works as is reasonably required as a result of the subdivision or development of land within a defined Development Contribution Area (DCA). These areas have not been defined and will be inserted into the Scheme in a future amendment.

Improved social, environmental, urban design and economic outcomes are achieved through the provision of infrastructure early in the planning process; ensuring sufficient and appropriately serviced land to accommodate future housing and community needs.

## **2.0 Development Contribution Provisions and Minor Amendment to Marina Zone Development Requirements**

### **2.1 Part 5 – Zones – Objectives and Requirements**

#### **5.2.3 Preparation of a Structure Plan**

The Council shall require preparation of a Structure Plan prior to granting and/or recommending approval to any development which involves subdivision or follows subdivision. The Structure Plan shall form the basis for subdivision and shall be in accordance with clause 5.11 of the Scheme.

#### **5.5.2 Preparation of a Structure Plan**

The Council shall require preparation of a Structure Plan before granting and/or recommending approval to any development which involves subdivision or follows subdivision. The Structure Plan shall form the basis for subdivision and shall be prepared in accordance with clause 5.11 of the Scheme.

#### **5.5.3 Development Requirements**

All development shall be in accordance with the relevant Exmouth Marina Village Precinct Design Guidelines (as amended).

### **2.2 Part 6 Special Control Areas**

#### **6.1 Operation of Special Control Areas**

- (a) The following special control areas are shown on the map as an SCA with a number with the exception of Development Control Areas which are shown as DCA with a number:
  - i). Development Contribution Areas (SCA 1)
- (b) In respect of a special control area shown on the Scheme Map, the provisions applying to the special control area apply in addition to the provisions applying to any underlying zone or reserve and any general provisions of the Scheme.

#### **6.2 Development Contribution Areas**

- (a) Development Contribution Areas are shown on the Scheme Map as DCA with a number and included in Schedule 11.
- (b) In respect of a Development Contribution Area shown on the Scheme Map, the provisions applying to the Development Contribution Area apply in addition to the provisions applying to the underlying zone or reserve and any general provisions of the scheme.

#### **6.2.1 Interpretation**

In clause 6.2, unless the context otherwise requires:

'Administrative costs' means such costs as are reasonably incurred for the preparation and (with respect to standard infrastructure items) implementation of the development contribution plan.

'Administrative items' means the administrative matters required to be carried out by or on behalf of the local government in order to prepare and (with respect to standard infrastructure items) implement the development contribution plan, including legal, accounting, planning, engineering, and other professional advice.

'Cost apportionment schedule' means a schedule prepared and distributed in accordance with clause 6.2.10.

'Cost contribution' means the contribution to the cost of infrastructure and administrative costs.

'Development contribution area' means shown on the scheme map as DCA with a number and included in Schedule 11.

'Development contribution plan' means a development contribution plan prepared in accordance with the provisions of *State Planning Policy 3.6 Development Contributions for Infrastructure* and the provisions of this clause 6.2 of the scheme (as incorporated in Schedule 11 to this scheme).

'Development contribution plan report' means a report prepared and distributed in accordance with clause 6.2.10.

'Infrastructure' means the standard infrastructure items (services and facilities set out in appendix 1 of *State Planning Policy 3.6 Development Contributions for Infrastructure*) and community infrastructure, including recreational facilities; community centres; child care and after school centres; libraries and cultural facilities and such other services and facilities for which development contributions may reasonably be requested having regard to the objectives, scope and provisions of this policy.

'Infrastructure costs' means such costs as are reasonably incurred for the acquisition and construction of infrastructure.

'Local government' means the local government or local governments in which the development contribution area is located or through which the services and facilities are provided.

'Owner' means an owner of land that is located within a development contribution area.

### **6.2.2 Purpose**

The purpose of having development contribution areas is to:



- (a) provide for the equitable sharing of the costs of infrastructure and administrative costs between owners;
- (b) ensure that cost contributions are reasonably required as a result of the subdivision and development of land in the development contribution area; and
- (c) coordinate the timely provision of Infrastructure.

**6.2.3 Development contribution plan required**

A development contribution plan is required to be prepared for each development contribution area.

**6.2.4 Development contribution plan part of scheme**

The development contribution plan is incorporated in Schedule 11as part of this scheme.

**6.2.5 Subdivision, strata subdivision and development**

The local government shall not withhold its support for subdivision, strata subdivision or refuse to approve a development solely for the reason that a development contribution plan is not in effect, there is no approval to advertise a development contribution plan, or that there is no other arrangement with respect to an owner's contribution towards the provision of community infrastructure.

**6.2.6 Guiding principles for development contribution plans**

The development contribution plan for any development contribution area is to be prepared in accordance with the following principles:

- (a) **Need and the nexus**  
The need for the infrastructure included in the plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).
- (b) **Transparency**  
Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.
- (c) **Equity**  
Development contributions should be levied from all developments within a development contribution area, based on their relative contribution to need.
- (d) **Certainty**  
All development contributions should be clearly identified and methods of accounting for cost adjustments determined at the commencement of a development.
- (e) **Efficiency**

Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.

- (f) **Consistency**  
Development contributions should be applied uniformly across a development contribution area and the methodology for applying contributions should be consistent.
- (g) **Right of consultation and review**  
Owners have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe the calculation of the costs of the contributions is not reasonable.
- (h) **Accountable**  
There must be accountability in the manner in which development contributions are determined and expended.

#### **6.2.7 Recommended content of development contribution plans**

- 6.2.7.1 The development contribution plan is to specify:
- (a) the development contribution area to which the development contribution plan applies;
  - (b) the infrastructure and administrative items to be funded through the development contribution plan;
  - (c) the method of determining the cost contribution of each owner; and
  - (d) the priority and timing for the provision of infrastructure.

#### **6.2.8 Period of development contribution plan**

A development contribution plan shall specify the period during which it is to operate.

#### **6.2.9 Land excluded**

In calculating both the area of an owner's land and the total area of land in a development contribution area, the area of land provided in that development contribution area for:

- (a) roads designated under the Scheme as primary Major Roads;
  - (b) existing public open space;
  - (c) existing government primary and secondary schools; and
  - (d) such other land as is set out in the development contribution plan;
- is to be excluded.

**6.2.10 Development contribution plan report and cost apportionment schedule**

6.2.10.1 Within 90 days of the development contribution plan coming into effect, the local government is to adopt and make available a development contribution plan report and cost apportionment schedule to all owners in the development contribution area.

6.2.10.2 The development contribution plan report and the cost apportionment schedule shall set out in detail the calculation of the cost contribution for each owner in the development contribution area, based on the methodology provided in the development contribution plan, and shall take into account any proposed staging of the development.

6.2.10.3 The development contribution plan report and the cost apportionment schedule do not form part of the scheme, but once adopted by the local government they are subject to review as provided under clause 6.2.11.

**6.2.11 Cost contributions based on estimates**

6.2.11.1 The determination of infrastructure costs and administrative costs is to be based on amounts expended, but when expenditure has not occurred, it is to be based on the best and latest estimated costs available to the local government and adjusted accordingly, if necessary.

6.2.11.2 Where a cost apportionment schedule contains estimated costs, such estimated costs are to be reviewed at least annually by the local government:

- (a) in the case of land to be acquired, in accordance with clause 6.2.12; and
- (b) in all other cases, in accordance with the best and latest information available to the local government, until the expenditure on the relevant item of infrastructure or administrative costs has occurred.

6.2.11.3 The local government is to have such estimated costs independently certified by appropriate qualified persons and must provide such independent certification to an owner when requested to do so.

6.2.11.4 Where any cost contribution has been calculated on the basis of an estimated cost, the local government:

- (a) is to adjust the cost contribution of any owner in accordance with the revised estimated costs; and

- (b) may accept a cost contribution, based upon estimated costs, as a final cost contribution and enter into an agreement with the owner accordingly.

6.2.11.5 Where an owner's cost contribution is adjusted under clause 6.2.11.4, the local government, on receiving a request in writing from an owner, is to provide the owner with a copy of estimated costs and the calculation of adjustments.

6.2.11.6 If an owner objects to the amount of a cost contribution, the owner may give notice to the local government requesting a review of the amount of the cost contribution by an appropriate qualified person ('independent expert') agreed by the local government and the owner at the owner's expense, within 28 days after being informed of the cost contribution.

6.2.11.7 If the independent expert does not change the cost contribution to a figure acceptable to the owner, the cost contribution is to be determined:

- (a) by any method agreed between the local government and the owner; or
- (b) if the local government and the owner cannot agree on a method pursuant to (a) or on an independent expert, by arbitration in accordance with the *Commercial Arbitration Act 1985*, with the costs to be shared equally between the local government and owner.

## 6.2.12 Valuation

6.2.12.1 Clause 6.2.12 applies in order to determine the value of land to be acquired for the purpose of providing Infrastructure.

6.2.12.2 In clause 6.2.12;

'Value' means the fair market value of land, at a specified date, which is defined as the capital sum that would be negotiated in an arms length transaction in an open and unrestricted market, assuming the highest and best use of the land with all its potential and limitations (other than the limitation arising from the transaction for which the land is being valued), wherein the parties act knowledgeably, prudently and without compulsion to buy or sell.

The net land value is to be determined by a static feasibility valuation model, using the working sheet model attached to this scheme as Schedule 12. As part of that feasibility an appropriate profit and risk factor is to be determined from which a 10 per cent profit factor is to be excluded from the calculation.

'Valuer' means a licensed valuer agreed by the local government and the owner, or, where the local government and the owner are unable to reach agreement, by a valuer appointed by the President of the Western Australian Division of the Australian Property Institute.

6.2.12.3 If an owner objects to a valuation made by the valuer, the owner may give notice to the local government requesting a review of the amount of the value, at the owner's expense, within 28 days after being informed of the value.

6.2.12.4 If, following a review, the valuer's determination of the value of the land is still not a figure acceptable to the owner, the value is to be determined:

- (a) by any method agreed between the local government and the owner; or
- (b) if the local government and the owner cannot agree, the owner may apply to the State Administrative Tribunal for a review of the matter under part 14 of the *Planning and Development Act 2005*.

#### **6.2.13 Liability for cost contributions**

6.2.13.1 An owner must make a cost contribution in accordance with the applicable development contribution plan and the provisions of clause 6.2.

6.2.13.2 An owner's liability to pay the owner's cost contribution to the local government arises on the earlier of:

- (a) the Western Australian Planning Commission endorsing its approval on the deposited plan or survey strata plan of the subdivision of the owner's land within the development contribution area;
- (b) the commencement of any development on the owner's land within the development contribution area;
- (c) the approval of any strata plan by the local government or Western Australian Planning Commission on the owner's land within the development contribution area; or
- (d) the approval of a change or extension of use by the local government on the owner's land within the development contribution area.

The liability arises only once upon the earliest of the above listed events.

6.2.13.3 Notwithstanding clause 6.2.13.2, an owner's liability to pay the owner's cost contribution does not arise if the owner commences development

of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided or strata subdivided since the coming into effect of the development contribution plan.

6.2.13.4 Where a development contribution plan expires in accordance with clause 6.2.8, an owner's liability to pay the owner's cost contribution under that development contribution plan shall be deemed to continue in effect and be carried over into any subsequent development contribution plan which includes the owner's land, subject to such liability.

**6.2.14 Payment of cost contribution**

6.2.14.1 The owner, with the agreement of the local government, is to pay the owner's cost contribution by:

- (a) cheque or cash;
- (b) transferring to the local government or a public authority land in satisfaction of the cost contribution;
- (c) the provision of physical infrastructure;
- (d) some other method acceptable to the local government; or
- (e) any combination of these methods.

6.2.14.2 The owner, with the agreement of the local government, may pay the owner's cost contribution in a lump sum, by instalments or in such other manner acceptable to the local government.

6.2.14.3 Payment by an owner of the cost contribution, including a cost contribution based upon estimated costs in a manner acceptable to the local government, constitutes full and final discharge of the owner's liability under the development contribution plan and the local government shall provide certification in writing to the owner of such discharge if requested by the owner.

**6.2.15 Charge on land**

6.2.15.1 The amount of any cost contribution for which an owner is liable under clause 6.2.13, but has not paid, is a charge on the owner's land to which the cost contribution relates, and the local government may lodge a caveat, at the owner's expense, against the owner's certificate of title to that land.

6.2.15.2 The local government, at the owner's expense and subject to such other conditions as the local government thinks fit, can withdraw a caveat lodged under clause 6.2.15.1 to permit a dealing and may then re-lodge the caveat to prevent further dealings.

6.2.15.3 If the cost contribution is paid in full, the local government, if requested to do so by the owner and at the expense of the owner, is to withdraw any caveat lodged under clause 6.2.15.

#### **6.2.16 Administration of funds**

6.2.16.1 The local government is to establish and maintain a reserve account in accordance with the *Local Government Act 1995* for each development contribution area into which cost contributions for that development contribution area will be credited and from which all payments for the infrastructure costs and administrative costs within that development contribution area will be paid. The purpose of such a reserve account or the use of money in such a reserve account is limited to the application of funds for that development contribution area.

6.2.16.2 Interest earned on cost contributions credited to a reserve account in accordance with clause 6.2.16.1 is to be applied in the development contribution area to which the reserve account relates.

6.2.16.3 The local government is to publish an audited annual statement of accounts for that development contribution area as soon as practicable after the audited annual statement of accounts becomes available.

#### **6.2.17 Shortfall or excess in cost contributions**

6.2.17.1 If there is a shortfall in the total of cost contributions when all cost contributions have been made or accounted for in a particular development contribution area, the local government may:

- (a) make good the shortfall;
- (b) enter into agreements with owners to fund the shortfall; or
- (c) raise loans or borrow from a financial institution,

but nothing in paragraph 6.2.17.1(a) restricts the right or power of the local government to impose a differential rate to a specified development contribution area in that regard.

6.2.17.2 If there is an excess in funds available to the development contribution area when all cost contributions have been made or accounted for in a particular development contribution area, the local government is to refund the excess funds to contributing owners for that development contribution area. To the extent, if any, that it is not reasonably practicable to identify owners and/or their entitled amount of refund, any excess in funds shall be applied, to the provision of additional facilities or improvements in that development contribution area.

#### **6.2.18 Powers of the local government**

The local government in implementing the development contribution plan has the power to;

- (a) acquire any land or buildings within the scheme area under the provisions of the *Planning and Development Act 2005*; and
- (b) deal with or dispose of any land which it has acquired under the provisions of the *Planning and Development Act 2005* in accordance with the law and for such purpose may make such agreements with other owners as it considers fit.

#### **6.2.19 Arbitration**

Subject to clauses 6.2.12.3 and 6.2.12.4, any dispute between an owner and the local government in connection with the cost contribution required to be made by an owner is to be resolved by arbitration in accordance with the *Commercial Arbitration Act 1985*.

### **2.3 Structure Plan Provisions**

#### **5.11 Structure Planning Areas**

##### **5.11.1 Interpretation**

In this part, unless the context otherwise requires:

'Detailed Area Plan' means a plan prepared and adopted pursuant to clause 5.11.1.15 of this Part;

'owner' means an owner or owners of land in the Structure Planning Area;

'structure plan' means a structure plan that has come into effect in accordance with clause 5.11.12 and includes any Outline Development Plan or Subdivision Guide Plan prepared and approved under the local planning scheme of the local government, where applicable to a structure planning area; and

'structure planning area' is an area that requires structure planning and may be required in any zone.

##### **5.11.2 Purpose of Structure Planning Areas**

5.11.2.1 The purpose of Structure Planning Areas is to:

- (a) identify areas requiring comprehensive planning; and
- (b) coordinate subdivision and development in areas requiring comprehensive planning.

##### **5.11.3 Subdivision and Development in Structure Planning Areas**

5.11.3.1 The subdivision and development of land within a Structure Planning Area is generally to be in accordance with any structure plan that applies to that land.

##### **5.11.4 Structure Plan required**

5.11.4.1 The local government is not to:

- (a) consider recommending subdivision; or



- (b) approve development of land within a Structure Planning Area unless there is a structure plan for the area or for the relevant part of that area that adequately defines the comprehensive planning detail required to guide orderly subdivision and development for urban land use.

5.11.4.2 Notwithstanding clause 5.11.4.1 a local government may recommend subdivision or approve the development of land within a Structure Planning Area prior to a structure plan coming into effect in relation to that land, if the local government is satisfied that this will not prejudice the specific purposes and requirements for the Structure Planning Area.

5.11.4.3 Where a proposed Structure Plan imposes a classification on the land included in it by reference to reserves, zones or the Residential Design Codes, and such Proposed Structure Plan requires the preparation of a Development Contribution Plan, the proposed Structure Plan may only be adopted if the subject area is listed in Schedule 11 of the Scheme as a Development Contribution Area.

5.11.4.4 Where building envelopes are depicted on a Structure Plan, all buildings and effluent disposal facilities shall be located within the building envelopes shown on those plans.

5.11.4.5 Notwithstanding the provisions of sub-clause 5.11.4.4, Council may approve the construction of the following structures outside of the building envelopes:

- (a) water tanks;
- (b) windmills;
- (c) stock watering and feed troughs; and
- (d) roofed structure open on all sides for the purpose of providing shelter to animals.

#### **5.11.5 Preparation of proposed structure plans**

5.11.5.1 A proposed structure plan may be required by the:

- (a) local government; or
- (b) Western Australian Planning Commission

A proposed structure plan may be required and prepared for all, or part of, any zone or development area.

#### **5.11.6 Details of proposed structure plan**

5.11.6.1 A proposed structure plan should include the following details where deemed relevant:

- (a) a map showing the area to which the proposed structure plan is to apply;
- (b) a site analysis map showing the characteristics of the site including:
  - (i) landform, topography and land capability;
  - (ii) conservation and environmental values including bushland, wetlands, damp lands, streams and water courses, foreshore

- reserves and any environmental policy areas;
  - (iii) hydrogeological conditions, including approximate depth to water table;
  - (iv) sites and features of Aboriginal and European heritage value;
- (c) a context analysis map of the immediate surrounds to the site including:
- (i) the pattern of neighbourhoods, and existing and planned neighbourhood, town and regional centres;
  - (ii) transport routes, including freeways, arterial routes and neighbourhood connector alignments, public transport routes, strategic cycle routes, bus stops and rail stations;
  - (iii) existing and future land use;
- (d) for district structure plans a map showing proposals for:
- (i) the pattern of neighbourhoods around town and neighbourhood centres;
  - (ii) arterial routes and neighbourhood connector streets;
  - (iii) the protection of natural features such as water courses and vegetation;
  - (iv) major open spaces and parklands;
  - (v) major public transport routes and facilities;
  - (vi) the pattern and disposition of land uses; and
  - (vii) schools and community facilities;
- (e) for local structure plans a map showing proposals for:
- (i) neighbourhoods around proposed neighbourhoods and town centres;
  - (ii) existing and proposed commercial centres;
  - (iii) natural features to be retained;
  - (iv) street block layouts;
  - (v) the street network including street types;
  - (vi) transportation corridors, public transport network, and cycle and pedestrian networks;
  - (vii) land uses including residential densities and estimates of population;
  - (viii) schools and community facilities;
  - (ix) public parklands; and
  - (x) urban water management areas;
- (f) a written report to explain the mapping and to address the following:
- (i) the planning framework for the structure plan including any applicable regional or district structure plans, and any

policies, strategies and scheme provisions which apply to the land, and any environmental conditions which apply under the Scheme;

- (ii) the site analysis including reference to the matters listed in clause 5.11.6.1(b) above, and, in particular, the significance of the conservation, environmental and heritage values of the site;
  - (iii) the context analysis including reference to the matters listed in clause 5.11.6.1(c) above;
  - (iv) how planning for the structure plan area is to be integrated with the surrounding land;
  - (v) the design rationale for the proposed pattern of subdivision, land use and development;
  - (vi) traffic management and safety;
  - (vii) parkland provision and management;
  - (viii) urban water management;
  - (ix) proposals for public utilities including sewerage, water supply, drainage, gas, electricity and communication services;
  - (x) the proposed method of implementation including any cost sharing arrangements and details of any staging of subdivision and development.
- (g) any other matter that is required for orderly and proper planning.

5.11.6.2 The maps referred to in clause 5.11.6.1 are to:

- (a) be drawn to a scale that clearly illustrates the details referred to in clause 5.11.6.1; and
- (b) include a north point, visual bar scale, key street names and a drawing title and number.

5.11.6.3 A proposed structure plan may, to the extent that it does not conflict with the Scheme, impose a classification on the land included in it by reference to reserves, zones or the Residential Planning Codes, and where the proposed structure plan becomes a structure plan, the local government is to have due regard to such reserves, zones or Residential Planning Codes when recommending subdivision or approving development of land within a Development Area.

5.11.6.4 A proposed structure plan must, in the opinion of the local government, be consistent with orderly and proper planning.

#### 5.11.7 Submission to local government and Commission

5.11.7.1 A proposed structure plan prepared by an owner is to be submitted to the local government.

5.11.7.2 Within 7 days of preparing or receiving a proposed structure plan which proposes the subdivision of land, the local government is to forward a copy of the proposed structure plan to the Commission.

5.11.7.3 The Commission may provide comments to the local government as to whether it is prepared to endorse the proposed structure plan with or without modifications.

#### 5.11.8 Advertising of structure plan

5.11.8.1 Within 60 days of preparing or receiving a proposed structure plan that conforms with clause 5.11.6 and complies with the Scheme (or such longer time as may be agreed in writing between the owner who submitted the proposed structure plan and the local government), the local government is to:

- (a) advertise, or require the owner who submitted the proposed structure plan to advertise, the proposed structure plan for public inspection by one or more of the following ways:
  - (i) notice of the proposed structure plan published in a newspaper circulating in the Scheme area;
  - (ii) a sign or signs displaying notice of the proposed structure plan to be erected in a conspicuous place or places in the Development Area, or part of the Development Area, to which the proposed structure plan applies; and
- (b) give notice or require the owner who submitted the proposed structure plan to give notice, in writing to:
  - (i) all owners whose land is included in the proposed structure plan;
  - (ii) all owners and occupiers who, in the opinion of the local government, are likely to be affected by the adoption of the proposed structure plan;
  - (iii) such public authorities and other persons as the local government nominates.

5.11.8.2 The advertisement and notice are to:

- (a) explain the scope and purpose of the proposed structure plan;
- (b) specify when and where the proposed structure plan may be inspected; and
- (c) invite submissions to the local government by a specified date being not less than 21 days after the giving or erection of the notice or publication of the advertisement, as the case requires.

### **5.11.9 Adoption of proposed structure plan**

5.11.9.1 The local government is to consider all submissions received and within 60 days of the latest date specified in the notice or advertisement for the making of submissions is to:

- (a) adopt the proposed structure plan, with or without modifications; or
- (b) refuse to adopt the proposed structure plan and, where the proposed structure plan was submitted by an owner, give reasons for this to the owner.

5.11.9.2 (a) In making a determination under clause 5.11.9.1, the local government is to have due regard to the comments and advice received from the Commission in relation to the proposed structure plan.

- (b) If the Commission requires modifications to the proposed structure plan, the local government is to consult with the Commission prior to making a determination under clause 5.11.9.1.

5.11.9.3 If the local government, after consultation with the Commission, is of the opinion that a modification to the proposed structure plan is substantial, the local government may in accordance clause 5.11.8.1:

- (a) readvertise the proposed structure plan; or
- (b) require the owner who submitted the proposed structure plan to readvertise the proposed structure plan.

5.11.9.4 If within the period referred to in clause 5.11.9.1, or such further time as may be agreed in writing between the owner who submitted the proposed structure plan and the local government, the local government has not made a determination under clause 5.11.9.1, the local government is deemed to have refused to adopt the proposed structure plan.

### **5.11.10 Endorsement by Commission**

5.11.10.1 If the proposed structure plan proposes the subdivision of land, then within 7 days of making its determination under clause 5.11.9.1, the local government is to forward the proposed structure plan to the Commission for its endorsement.

5.11.10.2 As soon as practicable after receiving the proposed structure plan, the Commission is to determine whether to endorse the proposed structure plan.

5.11.10.3 The Commission is to notify the local government of its determination under clause 5.11.10.2.

#### **5.11.11 Notification of structure plan**

5.11.11.1 As soon as practicable after adopting a proposed structure plan under clause 5.11.9.1 and if clause 5.11.10 applies, as soon as practicable after being notified of the Commission's decision under clause 5.11.10.3, the local government is to forward a copy of the structure plan to:

- (a) any public authority or person that the local government thinks fit; and
- (b) where the structure plan was submitted by an owner, to the owner.

#### **5.11.12 Operation of structure plan**

5.11.12.1 A structure plan comes into effect:

- (a) where the structure plan proposes the subdivision of land, on the day on which it is endorsed by the Commission pursuant to clause 5.11.10.2; or
- (b) on the day on which it is adopted by the local government under clause 5.11.9.1 in all other cases.

5.11.12.2 If a provision of a structure plan is inconsistent with a provision of the Scheme, then the provision of the Scheme prevails to the extent of the inconsistency.

#### **5.11.13 Inspection of structure plan**

5.11.13.1 The structure plan and the Commission's notification under clause 5.11.10.3 is to be kept at the local government's administrative offices, and is to be made available for inspection by any member of the public during office hours.

#### **5.11.14 Variation to structure plan**

5.11.14.1 The local government may vary a structure plan:

- (a) by resolution if, in the opinion of the local government, the variation does not materially alter the intent of the structure plan;
- (b) otherwise, in accordance with the procedures set out in clause 5.11.6 onwards.

5.11.14.2 If the local government varies a structure plan by resolution, and the variation does not propose the subdivision of land, the local government is to forward a copy of the variation to the Commission within 10 days of making the resolution.

5.11.14.3 If the local government varies a structure plan by resolution, and the variation proposes the subdivision of land, the local government is to

forward a copy of the variation to the Commission within 10 days of making the resolution for its endorsement.

5.11.14.4 As soon as practicable after receiving the copy of the variation referred to in clause 5.11.14.3, the Commission is to determine whether to endorse the proposed variation.

5.11.14.5 The Commission is to notify the local government of its determination under clause 5.11.14.4.

5.11.14.6 A variation to a structure plan by resolution comes into effect:

- (a) where the variation proposes the subdivision of land, on the day on which it is endorsed by the Commission pursuant to clause 5.11.14.4; or
- (b) on the day on which the local government resolves to make the variation under clause 5.11.14.1(a).

#### 5.11.15 Detailed area plan

5.11.15.1 A detailed area plan only applies to the determination of development applications and is required where:

- (a) it has been identified on a structure plan;
- (b) the local government considers that it is desirable to enhance, elaborate or expand the details or provisions contained in a structure plan for a particular lot or lots; or
- (c) the local government is of the opinion that any particular lot or lots within the Scheme area requires coordinated planning.

5.11.15.2 A detailed area plan may include details as to:

- (a) building envelopes;
- (b) distribution of land uses within a lot;
- (c) private open space;
- (d) services;
- (e) vehicular access, parking, loading and unloading areas, storage yards and rubbish collection closures;
- (f) the location, orientation and design of buildings and the space between buildings;
- (g) advertising signs, lighting and fencing;
- (h) landscaping, finished site levels and drainage;
- (i) protection of sites of heritage, conservation or environmental significance;
- (j) special development controls and guidelines; and
- (k) such other information considered relevant by the local government.

5.11.15.3 When a proposed detailed area plan is prepared under clause 5.11.15.1, the local government is to:

- (a) advertise, or require the owner who submitted the proposed detailed area plan to advertise, the proposed

detailed area plan for public inspection by one or more of the following ways:

- (i) notice of the proposed detailed area plan published in a newspaper circulating in the Scheme area;
  - (ii) a sign or signs displaying notice of the proposed detailed area plan to be erected in a conspicuous place or places in the Development Area, or part of the Development Area, to which the proposed detailed area plan applies; and
- (b) give notice or require the owner who submitted the proposed detailed area plan to give notice, in writing to:
- (i) all owners whose land is included in the proposed detailed area plan;
  - (ii) all owners and occupiers who, in the opinion of the local government, are likely to be affected by the adoption of the proposed detailed area plan; such public authorities and other persons as the local government nominates.

5.11.15.4 The advertisement and notice are to:

- (a) explain the scope and purpose of the proposed detailed area plan;
- (b) specify when and where the proposed detailed plan may be inspected; and
- (c) invite submissions to the local government by a specified date being not less than 21 days after the giving or erection of the notice or publication of the advertisement, as the case requires.

5.11.15.5 The local government is to consider all submissions received and:

- (a) approve the detailed area plan with or without conditions; or
- (b) refuse to approve the detailed area plan and, where the proposed detailed area plan was submitted by an owner, give reasons for this to the owner.

5.11.15.6 If within 60 days of receiving a detailed area plan prepared under clause 5.11.15.1(b), or such longer period as may be agreed in writing between the owner and the local government, the local government has not made one of the determinations referred to in clause 5.11.15.5, the local government is deemed to have refused to approve the detailed area plan.

5.11.15.7 Where a structure plan is in place, an approved detailed area plan constitutes a variation of the structure plan in regard to determining development matters under this scheme.



5.11.15.8 The local government may vary a detailed area plan in accordance with the procedures set out in clause 5.11.15 onwards provided such variations do not prejudice the intention of any related structure plan.

#### 5.11.16 Appeal

5.11.16.1 An owner who has submitted a proposed structure plan under clause 5.11.6 may appeal, in accordance with the *Planning and Development Act 2005*:

- (a) any failure of the local government to advertise, or require the owner to advertise, a proposed structure plan within the required time period under clause 5.11.8;
- (b) any determination of the local government:
  - (i) to refuse to adopt a proposed structure plan (including a deemed refusal); or
  - (ii) to require modifications to a proposed structure plan that are unacceptable to that owner.

5.11.16.2 An owner who has submitted a detailed area plan in accordance with clause 5.11.15 may appeal, in accordance with Part V of the *Planning and Development Act 2005*, any discretionary decision made by the local government under clause 5.11.15.5.

#### 5.11.17 Structure plans and other Instruments Adopted or Initiated Under Previous Scheme

5.11.17.1 Where pursuant to the requirements of the Shire of Exmouth Town Planning Scheme, a Structure Plan, Outline Development Plan, Subdivision Guide Plan, Detailed Area Plan or any similar instrument (a "planning instrument") had been adopted and was operative at the date of gazettal of a new Scheme, the planning instrument shall continue to have effect and may be amended or revoked as if it were a Structure Plan under the new Scheme.

5.11.17.2 Where under a previous scheme the process of adopting a planning instrument had been commenced but was not complete at the date of gazettal of a new Scheme, the steps in the process undertaken pursuant to the previous scheme shall be effective as if those steps were undertaken pursuant to the new Scheme, and the remaining steps or steps in the process necessary for the adoption of the planning instrument may be completed pursuant to the new Scheme, as if the planning instrument were a Structure Plan under the new Scheme.

## 2.4 Schedule 11 – Development Contributions Areas

(Left blank intentionally)

## 2.5 Schedule 12 – Development Contributions - Statutory Static Feasibility Assessment Model

**Gross realisation:**

Net lot yield @ average market value per lot  
"X" lots @ "\$Y" per lot \$ (1)

**Less GST @ standard / normal rates**

(1) Multiplied by GST rate/(100+GST rate) \$ (2)

(1-2) \$ (3)

**Less selling, marketing, advertising & settlement fees**

@ market % multiplied by (1) \$ (4)

Add back Input Tax Credit on selling fees \$ (5)

(4) Multiplied by GST rate/(100+GST rate) \$ (6)

(4-5) \$ (6)

Balance after selling costs etc & Input Tax Credit (3-6) \$ (7)

**Less adjusted profit & risk allowance as per SPP 3.6**

Market determined profit & risk allowance % (8)

Less fixed profit allowance per SPP3.6 = 10% (9)

Risk rate applied (8-9) = % (10)

EXPLANATION: (10) to be expressed as a whole number eg 15% = 15 (11)

ie Risk = (7) multiplied by (10)/((10)+(100)) \$ (11)

Balance after profit & risk factor (7-11) \$ (12)

**Less: development costs @ "X" lots multiplied by "\$Z" per lot** \$ (13)

Add back Input Tax Credit on (13) \$ (14)

(13) Multiplied by GST rate/(100+GST rate) \$ (14)

Development cost after Input Tax Credit (13-14) \$ (15)

**Add interest on net development costs (15)**

For 1/2 development & 1/2 selling term

@ Applicable market rates

(15) Multiplied by % rate \$ (16)

(15+16) \$ (17)

Balance after deduction of development costs & interest (12-17) \$ (18)

**Less interest on land value, rates & taxes and stamp duty**

Assessed over 1/2 development and 1/2 selling term

@ Applicable market rates

(18) Multiplied by % rate/(100+%rate) \$ (19)

Balance after interest on the land (18-19) \$ (20)

**Less rates & taxes**

Balance after rates & taxes (20-21) \$ (21)

\$ (22)

**Less Stamp Duty @ current statutory rates**

(22) Multiplied by stamp duty rate/(100+stamp duty rate) \$ (23)

Residual Land Value prior to GST considerations (22-23) \$ (24)

**Add GST (24) + GST at prevailing statutory rate** \$ (25)

**ASSESSED STATUTORY CONTRIBUTION PER SPP 3.6 (22+23) \$**

**The Static Feasibility Model is based upon:**

- (i) The number of lots yielded from the land will have a gross sale price which when multiplied with the number of lots created establishes the Gross Realisation (i)
- (ii) GST will be calculated by the standard/normal method
- (iii) Selling, marketing, advertising and settlement fees expressed as a percentage shall be added and then expressed as a total percentage against the gross realisation.
- (iv) The adjusted risk component applied in the model is the established market profit and risk at the date of valuation less the fixed 10 per cent profit applied in SPP 3.6.
- (v) Development costs will be established as an appropriate servicing cost per lot at the date of valuation multiplied by the lots realised from the land
- (vi) Interest against the development costs will be established by application of bank lending rates for such projects at the date of valuation
- (vii) Interest against the land in development will be established by application of bank lending rates for such development acquisitions at the date of valuation
- (viii) Rates and taxes will be applied for the full term of acquisition, development and sale.
- (ix) Stamp Duty will be applied at the statutory rate as applicable at the date of valuation.
- (x) GST will be applied at the appropriate rate adopted at the date of valuation.

### **3.0 Strategic Planning Context**

#### **3.1 State Planning Policy 3.6: Development Contributions for Infrastructure**

State Planning Policy (SPP) 3.6 outlines the principles and considerations that apply to development contributions provisions for infrastructure within Western Australia. The Policy objectives sought to:

- *promote the efficient and effective provision of public infrastructure and facilities to meet the demands arising from new growth and development;*
- *ensure that development contributions are necessary and relevant to the development to be permitted and are charged equitably among those benefiting from the infrastructure and facilities to be provided;*
- *ensure consistency and transparency in the system for apportioning, collecting and spending development contributions; and*
- *ensure the social well-being of communities arising from, or affected by, development.*

The key principle is that the 'beneficiary' pays to warrant fairness and equity. In determining the development contributions levied upon developers, guiding principles have been included in calculating the Development Contribution Plan for any Development Contribution Area:-

*(a) Need and the nexus*

*The need for the infrastructure included in the plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).*

*(b) Transparency*

*Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.*

*(c) Equity*

*Development contributions should be levied from all developments within a development contribution area, based on their relative contribution to need.*

(d) *Certainty*

*All development contributions should be clearly identified and methods of accounting for cost adjustments determined at the commencement of a development.*

(e) *Efficiency*

*Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.*

(f) *Consistency*

*Development contributions should be applied uniformly across a development contribution area and the methodology for applying contributions should be consistent.*

(g) *Right of consultation and review*

*Owners have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe the calculation of the costs of the contributions is not reasonable.*

(h) *Accountable*

*There must be accountability in the manner in which development contributions are determined and expended.*

Council has identified a need for community and development infrastructure in order to cater for the future urban growth identified in the Exmouth Townsite Structure Plan. Items identified by Council include: flood mitigation works and the implementation of future recommendations from the foreshore management plan, town centre revitalisation plan and district water management strategy.

The cost apportionment methodology adopted in this amendment relies on the nexus principle and is outlined in Section 2.2. These items listed above, are deemed to have a nexus if the occupants within a DCA are likely to make use or are beneficiaries of the infrastructure item.

### 3.2 State Planning Policy 6.3: Ningaloo Coast

SPP6.3 outlines the strategic vision for the Ningaloo Coast in the *Ningaloo Coast Regional Strategy Carnarvon to Exmouth 2004*; notably the strategy includes key planning objectives relevant to defined precincts:-

- Residential (including Exmouth Marina Village): *to provide for sufficient and appropriately serviced land to accommodate future housing needs within physical and environmental constraints.*
- Future urban land (west of Exmouth Marina Village): *to ensure appropriate linkages between the Exmouth marina precinct and the future urban land on the west side of Murat Road.*

Further the implementation strategy suggests that any future residential development should be interspersed with either public open space or native vegetation greenways.

### 3.3 Exmouth Townsite Structure Plan

The structure plan supports the continuation of urban development in a southerly direction within the townsite and future growth of Exmouth should be integrated with the Exmouth Marina Village and the Exmouth Gulf. Appropriate linkages are recommended to be established to interface these areas with the existing town centre.

Provision for any future residential areas should be guided by the principles of *Liveable neighbourhoods* to provide a wide variety of housing and a sense of community focused neighbourhoods. The structure plan identifies sufficient residential land for the anticipated population growth for the North West Cape.

The structure plan allocates residential land for a minimum permanent population of approximately 5,200 persons (excluding rural residential areas). These identified future urban growth areas are located near existing infrastructure to reduce the high costs of providing serviced land.

Objectives sought by the structure plan are reflected in the proposed development contribution provisions; these include to:

- *Ensure Exmouth Townsite caters for the needs of the community in terms of providing a diversity of living options and adequate social infrastructure.*
- *Ensure land is readily available to support ongoing employment opportunities.*
- *Ensure infrastructure planning and movement system responds to the growth of Exmouth in an orderly and sustainable manner.*
- *Acknowledge the need to balance townsite growth initiatives with conservation of ecosystem and biodiversity values, and*
- *Provide for the recreational aspirations of the community and visitor population.*

### **3.4 Shire of Exmouth Town Planning Scheme No. 3**

The Scheme is silent on the matter of developer contributions within the Residential, Town Centre, Tourist, Marina, Mixed Use, Light Industrial, Industrial, Special Rural and Pastoral zones. Residential Development Zone provides reference to *promote development consistent with the planning objectives and recommendations of the Exmouth-Learmonth (North West Cape) Structure Plan.*

The broad Scheme objective under clause 1.7(e) permits Council to *make provision for other matters necessary or incidental to Town Planning and housing.* This broad provision is open to interpretation and it is recommended that the Scheme incorporate the outlined developer contribution provisions to ensure that the Scheme provides a clear intent and interpretation.

Outline Development Plan provisions currently contained within the Scheme under clause 5.2.3 and 5.5.2 should be amended to require the preparation of a Structure Plan in accordance with clause 5.11 outlined in the amendment report. This will ensure that the Scheme provides consistency for the development requirement within the Marina Zone and Residential Development Zone.

To ensure that the Scheme is consistent on development requirements within the Marina Zone Part 5 clause 5.5.3 should be amended to read "all development shall be in accordance with the relevant Exmouth Marina Village Precinct Design Guidelines (as amended)." This will certify that the structural engineering requirements outlined in the Design Guidelines are legally interoperated correctly in the Scheme text.

#### **4.0 Conclusion**

The purpose of the Scheme amendment is to insert the developer contributions provisions into the Scheme in accordance with SPP3.6 and structure plan provisions. Future urban growth within the Exmouth townsite will occur on constrained land requiring major infrastructure investment to accommodate the physical and environmental needs.

Various studies have been commissioned by the Shire of Exmouth which will allude to recommendations, including cost estimates, for infrastructure requirements generally and site specific. These works will incur significant capital costs to provide sufficient and appropriately serviced land to accommodate future needs within physical and environmental constraints.

The implementation of required works should be shared with developers to provide for the equitable sharing of infrastructure costs between owners and in particular, to ensure cost contributions are only required towards such infrastructure as is reasonably required as a result of the subdivision and development of land in the DCA.

Further, the Commission recommended that the establishment of DCAs as required by SPP3.6 is conducted as a separate amendment process. The valuation of land acquired for the provision of infrastructure should in accordance with Schedule 12: The Statutory Static Feasibility Assessment Model.



**PLANNING AND DEVELOPMENT ACT 2005**

**SHIRE OF EXMOUTH**

**TOWN PLANNING SCHEME N<sup>o</sup>. 3**

**DISTRICT ZONING SCHEME**

**AMENDMENT N<sup>o</sup>. 19**

The Shire of Exmouth Council under and by virtue of the powers conferred upon it in that behalf by the *Planning and Development Act 2005* hereby amends the above Local Planning Scheme by;

1. Insert a new Part 6 Special Control Areas into the Scheme and renumber the Scheme accordingly;
2. Insert the Development Contribution provisions in the Scheme under Part 6 Special Control Areas;
3. Insert new provisions for Structure Plans into Part 5 of the Scheme;
4. Insert Schedule 11 - Development Contribution Areas and Schedule 12 - Statutory Static Feasibility Assessment Model in order to be consistent with SPP3.6;
5. Amend Part 5 clause 5.2.3 and 5.5.2 to require the preparation of a Structure Plan in accordance with clause 5.11; and
6. Amend Part 5 clause 5.5.3 to read "all development shall be in accordance with the relevant Exmouth Marina Village Precinct Design Guidelines (as amended)."

**SHIRE OF EXMOUTH**  
**TOWN PLANNING SCHEME N<sup>o</sup>. 3**  
**AMENDMENT N<sup>o</sup>. 19**

**ADOPTION**

Adopted by resolution of the Council of the Shire of Exmouth at the Ordinary Meeting of the Council held on the 20<sup>th</sup> day of October 20 11.

.....  
*[Signature]*  
PRESIDENT

Date 22.3.12

.....  
*[Signature]*  
CHIEF EXECUTIVE OFFICER

Date 22.3.12

**FINAL APPROVAL**

Adopted for final approval of the Shire of Exmouth at the meeting of Council held on the 20<sup>th</sup> day of October 2011, and the Common Seal of the Shire of Exmouth was hereto affixed by the authority of a resolution of the Council in the presence of:

.....  
*[Signature]*  
PRESIDENT

Date 22.3.12

.....  
*[Signature]*  
CHIEF EXECUTIVE OFFICER

Date 22.3.12

Common Seal

**RECOMMENDED/SUBMITTED FOR FINAL APPROVAL**

.....  
*[Signature]*  
DELEGATED UNDER S. 16 OF THE  
PLANNING AND DEVELOPMENT ACT 2005

.....  
9 AUG 2012  
Date



**FINAL APPROVAL GRANTED**

.....  
MINISTER FOR PLANNING

.....  
Date

It is hereby certified that this is a true copy of the ~~Scheme~~/Amendment, final approval to which was endorsed by the Minister for Planning on 18/10/12.

Certified by .....

Officer of the Commission duly authorised pursuant to Section 24 of the Planning and Development Act 2005 and Regulation 22(3) of the Town Planning Regulations 1967.